

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Gary D. Ervin,

Petitioner,

v.

Warden, United States Penitentiary,
Lewisburg, Pennsylvania

Respondent.

Case No. 1:09cv28

Judge Michael R. Barrett

ORDER

This matter is before the Court on the Report and Recommendation (“Report”) filed by Magistrate Judge Michael R. Merz on March 18, 2011 (Doc. 34). Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report in a timely manner. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).¹ No objection to the Report has been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, this Court finds the Report to be correct. Accordingly, it is **ORDERED** that the Report is hereby **ADOPTED**. As the Report recommended (Doc. 34, 1–2), because a certificate of appealability has been denied, Petitioner is **DENIED** leave to appeal from denial of his Motion to Amend.

IT IS SO ORDERED.

s/Michael R. Barrett
UNITED STATES DISTRICT JUDGE

¹ Notice was attached to the Report regarding objections. (Doc. 34, 2.)